IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

1. Shiv Narayan Vs. State of Rajasthan

S.B.CR.MISC. PETITION NO.770/2007

2. Shiv Narayan & Anr. Vs. State of Rajasthan

S.B.CR.MISC. PETITION NO.771/2007

DATE OF ORDER :: July 17, 2007

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.Chaitanya Gahlot, for the petitioner.

Mr.Ashok Upadhyaya, P.P. for the State.

BY THE COURT:

Issue notice for final disposal.

Mr.Ashok Upadhyaya, learned Public Prosecutor is directed to accept the notice for the respondent State. He accepts the same.

Learned counsel for the petitioners has supplied a copy of both the petitions to the learned Public Prosecutor.

Since both these criminal miscellaneous petitions involve

common question of law and facts and between the same parties therefore, with the consent of the learned counsel for the parties, they are heard together and being decided at the admission stage.

Facts giving rise to the these criminal petitions are that petitioner Shiv Narayan is facing a criminal trial before the Judicial Magistrate, Rajsmand (for short `the trial court' hereinafter) being Criminal Regular Case No.150/2006 and petitioner Shiv Narayan and his wife Smt. Shanta Devi are also facing criminal case in a very Court being Criminal Regular Case No.151/2006. The matter was posted to 17.2.2007. In Cr.Regular Case No.150/2006, none of the prosecution witnesses appeared. However, in Cr.Regular Case No.151/2006, witness PW.3 Vinod Chaplot appeared. Statement of examination-in-chief of PW.3 Vinod Chaplot was recoded. Accused-petitioners were afforded an opportunity to cross-examine all the witnesses, however, the accused-petitioners sought adjournment to cross-examine the witness PW.3, who was present in court. The trial court adjourned the matter being Cr.Regular Case No.151/2006 for cross examining the witnesses at the cost of Rs.1000/- and the matter was posted to 9.3.2007.

In Cr.Regular Case No. 150/2006, since no witness

appeared on 17.2.2007, therefore, witnesses were summoned by bailable warrants and the matter was posted to 9.3.2007 for recording the evidence. In Cr.Case No.150/2007, neither the accused-petitioner Shiv Narayan appeared nor the witnesses appeared and, therefore, the trial court forfeited the bail bonds of the petitioner and initiated the proceedings under section 446 Cr.P.C.

In Cr.Case No.151/2006, witness Vinod Chaplot, who was bound down to appear on 9.3.2007 appeared. The accused-petitioners Shiv Narayan and his wife Smt. Shanta Devi did not appear and the witness was not cross-examined by the counsel on the ground that the accused have not appeared. However, an application seeking dispensing with the personal appearance of the accused-petitioners was filed, which came to be dismissed by the trial court. Hence, this petition.

I have heard learned counsel for the petitioner and the Public Prosecutor for the State.

Keeping in view the facts and circumstances of the case, in my view, the trial court was justified in dismissing the application seeking dispensing with the personal appearance of the accused-petitioners for the reasons that witness PW.3 Vinod Chaplot

appeared on 7.2.2007 and his statement examination-in-chief was recorded by the trial court. The accused-petitioners were afforded an opportunity to cross-examine the witness, yet they failed to cross-examine the witness and sought adjournment. The trial court liberally granted adjournment at the cost of Rs.1000/- and the matter was posted to 9.3.2007. Witness PW.3 was bound down to appear on 9.3.2007, he appeared. Finding that witness appeared, the accused-petitioners remained absented from the court in order to avoid cross-examine the witness and moved an application seeking dispensing with the personal appearance. In the circumstances of given case, in my view, the trial court was justified in dismissing the application as also initiating the proceedings under section 446 Cr.P.C.

Learned counsel for the petitioners submits that the next date before the trial court is 4.8.2007 and both the petitioners in Cr.Case No.150/2006 and 151/2006 respectively will appear before the trial court and move a regular bail and if any of the prosecution witnesses appears before the trial court, the petitioners will cross-examine the witness.

In view of the statement of the learned counsel for the petitioner, if the petitioners surrender before the trial court on or before 4.8.2007 and move a regular bail, the trial court shall

consider and decide the bail application on same day and release the petitioner on the terms and conditions which the trial court thinks fit. However, it is made clear that the bail will be subject to cross-examination of the witnesses, if the witnesses appear before the trial court and make statement..

With directions, both the criminal miscellaneous petitions are disposed of.

[H.R.PANWAR],J.

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